IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.516 OF 2005

Raj Residency I Co-op. Hsg. Society Appellant

Vs.

M/s.Shree Hari Builders & ors. Respondents

Ms.Sumedha Rao for appellant.

Mr.V.A.Thorat, Senior Counsel with Mr.J.Reis i/b.
M/s.M.P.Savla & Co. for respondents.

CORAM: B.H.MARLAPALLE,J.
June 14, 2005.

ORAL ORDER:

1. Heard Mrs.Rao, the learned counsel for the appellant and Mr.Thorat, learned Senior Counsel with Mr.Reis and Mr.Savla for the respondents.

2. In S.C.Suit No.813 of 2005 the plaintiff - Society had presented a draft Notice of Motion and by the impugned order dated 31-3-2005 the learned Judge of the City Civil Court at Mumbai dismissed the Notice of Motion and directed the plaintiffs to get the Notice of Motion registered while adjourning it to 14-6-2005 for directions. The Notice of Motion has been subsequently registered as Notice of Motion No.1340 of 2005. In this appeal the ad-interim order was passed on 25th April 2005 and was continued by

the subsequent order dated 28-4-2005. However, on 4th May 2005 the statement of the learned counsel for the respondents made on instructions was recorded to the following effect:

> "Without prejudice to the rights and contentions of the parties, the Respondents Nos.1 to 5 will not create any third party interests in respect of the portion of land marked by letter "Y" on the plan annexed to the plaint till 26th June 2005."

The said statement was accepted by this Court.

3. After having heard the learned counsel for the respective parties it is hereby clarified that the impugned order shall be treated to the limited extent of turning down the prayer for ad-interim relief and undoubtedly the Notice of Motion now registered and numbered as Notice of Motion No.1340 of 2005 will have to be heard and decided on its own merits. The present respondents shall file their written statement / reply on the next date i.e. 21/6/2005 as fixed by the Court below and it is directed that the Notice of Motion shall be heard and decided on its

own merits on or before 8th July 2005, without being influenced by any observations made in the impugned order and the statement made by the learned counsel for the respondents recorded hereinabove. The said statement shall continue till the Notice of Motion is decided i.e. upto 8th July 2005.

4. The Appeal is disposed of in terms of the above observations.

(B.H.MARLAPALLE,J.)